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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JUDY BUNDORF, *et al.*,

Plaintiffs,

v.

RYAN ZINKE¹, *et al.*,

Defendants,

and

SEARCHLIGHT WIND ENERGY, LLC

Intervenor-Defendant.

CASE NO.: 2:13-cv-616-MMD-PAL

**SECOND DECLARATION OF
KEVIN EMMERICH**

¹ Ryan Zinke, S.M.R. Jewell's successor as Secretary of the Interior, is automatically substituted as a party under Fed. R. Civ. P. 25(d).

1 I, KEVIN EMMERICH, state and declare as follows:

2 1. My name is Kevin Emmerich. I am the same Kevin Emmerich who filed a
3 previous declaration in this case in January, 2014. The following matters are personally known to
4 me, and if called as a witness I would and could truthfully testify thereto. I make this declaration
5 in support of the plaintiffs' motion for attorneys' fees and costs.

6 2. As I explained in my first declaration, I am one of the founding members of Basin
7 and Range Watch, and currently serve on the Board of Directors and volunteer for the
8 organization. I moved to the southern Nevada area 14 years ago with my wife, after I had lived
9 and worked in Death Valley National Park for 11 years. We co-founded Basin and Range Watch
10 in 2008. Basin and Range Watch is a 501(c)(3) non-profit public interest organization, and at the
11 time this suit was filed the organization had one employee and had assets of approximately
12 \$7,000, no liabilities, and thus a net worth of approximately \$7,000. As I also explained in my
13 first declaration, I have also been a member of Friends of Searchlight Desert and Mountains, and
14 helped to create the organization's website.

15 3. Basin and Range Watch has worked for the past decade to conserve the Mojave,
16 Great Basin and Sonoran deserts of Nevada and California and to educate the public about the
17 diversity of life, cultures, and history of the desert, the ecological and aesthetic harms that
18 industrial-scale energy projects are causing in the Mojave Desert, as well as sustainable local
19 renewable energy alternatives. Basin and Range Watch's goal is to identify the problems of
20 energy sprawl and find solutions that will preserve our natural ecosystems and open spaces.

21 4. Basin and Range Watch's interest in and concerns about the Searchlight Wind
22 Energy Project began during the NEPA scoping process in late 2008 and rose after we attended
23 the January 2009 scoping meeting for the project in Searchlight, Nevada. A full history of Basin
24 and Range Watch's involvement in publicizing and challenging the Searchlight Wind project is
25 available on our website at <http://basinandrangewatch.org/SearchlightUpdates.html>. The project
26 was initially conceived as a 370 megawatt (MW) project that would literally have surrounded the
27 town of Searchlight. We were appalled at the plans to destroy or degrade over 20,000 acres of

1 nearly unspoiled hills and Joshua tree and yucca forests that provide outstanding habitat for
2 desert tortoises, golden eagles, desert bighorn sheep, bats, and many other animals and birds in
3 order to build this industrial-scale wind project.

4 5. In the following three years, the project was reduced to 200 MW (87 turbines)
5 covering approximately 18,949 acres (about 30 square miles) by eliminating some strings of
6 turbines and a whole section of the project west of Searchlight in relatively less valuable habitat.
7 However, this reduction in the size of the project did not meaningfully reduce the likely harm
8 that the project would cause to tortoises, eagles, and other animals because the remaining
9 proposed turbines were still concentrated in the most important and pristine habitat areas in the
10 Searchlight hills. Basin and Range Watch became determined to prepare extensive comments
11 once the draft Environmental Impact Statement was released and to file suit to challenge the
12 legality of putting a large-scale wind project in such important species habitat with the goal of
13 blocking its development.

14 6. Along with Judy Bundorf, I contacted attorneys in Nevada about representing
15 Basin and Range Watch and potentially other groups and individuals in preparing comments on
16 and litigating the legality of this project, but we were unable to find any attorney who would
17 represent us at the statutory rates available under the Equal Access to Justice Act. The rates
18 charged by private firms for complex and time-consuming litigation such as this case were and
19 are far beyond the reach of Basin and Range Watch to afford. On top of that, the pool of
20 qualified attorneys who litigate against federal agencies such as the BLM and Fish & Wildlife
21 Service is very limited, and indeed we were not able to find any attorneys with the necessary
22 expertise in NEPA and Endangered Species Act litigation willing to take the case at the EAJA
23 statutory rate. The attorneys we were able to secure (Dave Becker, Stacy Harrop, and Erin
24 Madden) had specialized expertise in pursuing the type of complex environmental litigation that
25 was critical to develop, maintain and, ultimately, succeed in this case. Basin and Range Watch's
26 counsel provided top-notch representation that Basin and Range Watch could not have obtained
27 otherwise. Although Basin and Range Watch litigates only as a last resort, because of the

1 significance of the habitat threatened by the Searchlight Wind Energy Project we knew from the
2 beginning of our involvement that we wanted to litigate any federal approval of the Project. This
3 litigation became an important part of Basin and Range Watch's mission to project the Mojave
4 Desert from irresponsible large-scale energy development, and the services of our attorneys were
5 essential to achieving the outstanding outcome in this case.

6 7. In my first declaration, I included photographs showing the unspoiled beauty of
7 the Searchlight hills and visualizing how they would look if the industrial wind project were
8 built. I also described my many visits to the area where the project would be built, and the many
9 species I have observed there. Since we filed this suit, I have returned several times to the
10 Searchlight hills, hopeful that our suit would be successful in protecting the area and the
11 tortoises, golden eagles, and other species that live there. With the vacatur of the Record of
12 Decision and related documents, the subsequent decision by the developer to relinquish the
13 vacated right-of-way, and BLM's acceptance of the relinquishment, removal of the
14 meteorological towers, and restoration of the small plots where those had stood, Basin and Range
15 Watch has achieved everything that it set out to achieve when it decided to bring this suit. Our
16 members know that they will now be able to return to and enjoy the beauty of the Searchlight
17 hills without having to be concerned that the Searchlight Wind Energy Project will ever be built
18 there.

19
20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
21 and correct.

22 DATED this 5th day of September 2017.

23
24 

25 _____
26 Kevin Emmerich
27

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b); LR 5-1

I certify that on the date indicated below, I filed the foregoing document(s) with the Clerk of the Court using the CM/ECF system, which would provide notification and a copy of same to counsel of record.

Dated: September 15, 2017

/s/ David H. Becker